The Board of Adjustment of the Township of Denville held its regular scheduled meeting on Wednesday, June 6, 2012. The meeting was held in the Municipal Building, 1 St. Mary's Place and commenced at 7:00 P.M. Chairperson Rodimer presided.

Secretary Probasco read NOTICE OF PUBLIC MEETING.

ROLL CALL:  Present:  James Rodimer, Tom Dolan, Sally Dankos, Frank Passucci, Arthur Korn, Susan Richter  
Absent:  John Murphy, Roger Spiess, Sean Ryan  
Prof. Present:  Larry I. Wiener, Esq., William Denzler, PP, John Ruschke, PE

PURCHASING:
Motion to pay vouchers submitted by Larry I. Weiner, (dated May 21, 2012) subject to the availability of funds, was made by Mbr. Dankos, seconded by Mbr. Passucci and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Hatch Mott MacDonald, (dated May 25, 2012) subject to the availability of funds, was made by Mbr. Dankos, seconded by Mbr. Passucci and unanimously approved by all Members present and able to vote.

RESOLUTIONS
BA 12-08:  William & Diana Bradley  
15 New Street  
Block 31301, Lot 28
A motion to adopt the resolution of approval was made by Mbr. Korn, seconded by Mbr. Rodimer and unanimously approved by all members eligible to vote.
Roll Call:  Ayes – Korn, Rodimer, Dankos, Dolan, Richter

PUBLIC HEARINGS
BA 12-10:  Joseph Holihan & Robyn Scott  
11 Hussa Place  
Block 40605, Lot 145
Chr. Rodimer announced to the public that the applicant had insufficient legal notice and would not be heard tonight. The public hearing for this application rescheduled and renoticed.

BA 12-04:  David Ray  
20 Mary Avenue  
Block 40605, Lot 145
Chr. Rodimer announced to the public that the applicant had requested adjournment and would not be heard tonight. The public hearing for this application will be carried to July 18, 2012 without further notice.

BA 12-07:  Michael & Mary Sheeran  
27 Indian Spring Trail  
Block 40905, Lot 1649
The applicants, Mary and Michael Sheeran (27 Indian Spring Trail) were present and sworn under oath. Mr. Sheeran testified to having a side yard setback requirement to construct a detached garage. Mary Sheeran commented that the proposed would enhance both the property and the neighborhood.

Chr. Rodimer opened the public hearing to the professionals.

John Ruschke, Township Engineer inquired about consideration to attaching to the dwelling and the possible benefits. Michael Sheeran commented on the expense. Mary Sheeran added that...
architectural work would be required to work with the existing roof line of the existing dwellings roof.

Bill Denzler, Township Planner inquired about distance. Michael Sheeran responded approximately five feet and that the neighbor was also present. Mr. Denzler indicated that both a front yard setback and a side yard setback were required.

Chr. Rodimer opened to the board members.

Mbr. Korn inquired about the size of the garage door. Voiced concern about the distance for maintenance purposes with a 1’ setback. The applicant agreed to a 2’ setback would be agreeable. Asked for a gutter to be placed on the property line side. The applicant indicated that there would be gutters.

Mbr. Richter about the size of the side door and inquired about opening in to the garage. Michael Sheeran indicated that door could moved, swing out or eliminated.

Mbr. Passucci voiced having similar concerns to Mbr. Korn. Commented on the storage and wet area without a lot of air flow. Adding that the gutters will alleviate somewhat. Inquired about electric and water. Michael responded. Shrinking would be ideal. No other questions.

Mbr. Dolan voiced runoff being his only concern. Michael responded to adding the gutter and bringing it down to the pond. Mbr. Dolan indicated that so long as it works for the neighbor.

Mbr. Dankos commented on the plans being nice.

Acting Chr. Rodimer commented on the nice look of the home, natural stone and had no questions.

Chr. Rodimer opened to the public and seeing none, closed the public portion.

Mbr. Dankos made a motion with conditions of gutter and a 2’ instead of 1’ setback.

A motion to approve this application was made by Mbr. Dankos, seconded by Mbr. Korn and unanimously approved by all members eligible to vote. 

Roll Call: Ayes – Dankos, Korn, Passucci, Dolan, Richter, Rodimer

BA 12-09: Darren & Teresa Shetler
26 St. Mary’s Place
Block 50402, Lot 4

The applicant’s Terri and Darren Shetler were present and sworn under oath. Applicant’s propose to build a 8’ x 8’ shed requiring “C” bulk variance relief for rear yard setback. Terri Shetler testified that maintaining the required setbacks of 5’ side yard and 10’ rear yard setback, would have the shed butt up against the rear deck. Measured from various locations in the yard and could not find a more suitable location than what was proposed. Terri Shetler explained that even with the 1’ rear yard setback, since the neighbors fence is between 3-4’ off the property line, the shed would not be right up against the fence.

Chr. Rodimer opened to the board members.

Mbrs. Dolan and Dankos had no questions or comments. Mbr. Korn commented on a 3’ rear yard setback being more desireable. The applicant indicated that there is an existing swing set that is not shown on the survey and weren’t sure if there would be enough space.

Mbr. Richter inquired about water runoff and gutters. The applicant stated that it was a prefabricated shed and was not sure if gutters could be added. Mbr. Korn inquired if there was any pooling of water on the property and the applicant replied no. Mbr. Richter had no further questions.

Mbr. Passucci commented on having a similar concern regarding the 1’ setback. Agreed on the proposed being the best location. Stating that moving the shed to the other side of the property would destroy the setup of the yard.

Acting Chr. Rodimer inquired about the roof height. Mr. Shetler indicated the shed would be an 8’ x 8’ x 8’. Mbr. Rodimer commented on the roof height of 8’ and having 2’ rear yard setback being sufficient. Mbr. Korn stated he was not nailed to the 3’ and suggested the board be polled. Mbr. Dankos and Dolan were agreeable to the 2’ setback. Mbr. Dolan added that the proposed shed would be small enough to move if necessary.

Chr. Rodimer opened this hearing to the public and seeing none, closed the public portion of the meeting.

A motion to approve this application was made by Mbr Korn, seconded by Mbr. Richter and unanimously approved by all members eligible to vote. 

Roll Call: Ayes – Korn, Richter, Dankos, Passucci, Dolan Rodimer

BA/SPV 09-18:W&L Associates, LLC
423 Main Street
Block 41307, Lots 2 & 8

Ron Heymann, Esq. of Heymann & Fletcher, (1201 Sussex Turnpike, Mt. Freedom) represented the applicant, W&L Associates, LLC. Applicant is proposing to preliminary/final site plan approval with use and bulk variance relief to expand an existing non-conforming retail structure.
Andrew Talbert, Managing Member of W&L Associates (14 Resnik Drive, Randolph) was present and sworn under oath. The tenants of the building are Richie’s Music in the front and Kim Swim in the rear. The building is currently zoned for standalone office use, requiring variance approval for retail use. Cost prohibitive and not financially feasible. Two sites were merged for a larger strip mall concept. Similar synergies and will beautify. Approximately 1,500 sq. ft. with a 3,000 sq. ft. 2nd level. Entered Exhibit A-1 Redevelopment Project.

Chr. Rodimer opened to the board members for questions.

Mbr. Dolan had none.
Mbr. Dankos stated it’s hard to visualize something of this size in this space.
Mbr. Korn inquired about Tri-State and W&L Associates, LLC, Tax Assessor’s comments and that the applicant merge the lots. Mr. Talbert stated that W&L and Tri-State are the same principals, ownership and everything. Believes everything is under W&L name now and that the lots are merged. If not, they will redo it.
Mbrs. Richter, Passucci & Rodimer had none.

Chr. Rodimer opened to the public for questions on the testimony and seeing none, closed the public portion of the meeting.

Terry Walter, Architect of David Zuckerman Architects (32 South Mtn. Avenue, Montclair) was present, sworn in and accepted as an expert witness. The building is 60’ wide x 126’ 8” deep with a 7,600 sq. ft. footprint to be divided into 5 separate tenancies with the proposed addition on the eastern side. 2nd floor approximately 3,075 sq. ft. and 60’ deep. A-1B is the first floor and A-2B is the second floor. R-1 of Exhibit A-1 is the front of the building with the slope to the rear of the building. Height of the parapet steps down 1’8”, store front the same 25’ wide size along each tenant with awnings and goosenecks above each unit.

Chr. Rodimer opened to the professionals.

John Ruschke, Township Engineer inquired about the visibility of the second floor. Terri Walter responded that the second floor wouldn’t be visible except when driving.
Bill Denzler, Township Planner inquired about the 35’ height and the HVAC units. Terri Walter responded to the HVAC on the roof and the applicant agreed to additional screening if visible and required.
Larry Weiner, Esq. inquired about ADA compliant entrances. Terri Walter responded there would be access through a stairway and that it would be ADA compliant. Only buildings over 10K sq. ft. require an elevator.
Mbr. Korn asked the township planner what the maximum height requirements were. Mr. Denzler indicated 2 stories, 30’. Explaining that it is the highest point to the average grade. Ms. Walter confirmed that the height was 34.4 from the lowest portion of the site with 27.85’ is the average height. Mbr. Korn inquired about the FAR requirements. Mr. Denzler confirmed that the FAR requirements have not changed in the past three years. Mbr. Korn wanted to establish that the drawings were dated 2009 and that the proposed plan always involved exceeding the FAR.
Mbr. Richter had none.
Mbr. Passucci wanted to confirm the front, rear and sides of the building.

Chr. Rodimer opened to members of the public and seeing none, closed the public portion of the meeting.

Steven Smith, PP, PE and Principal of Jaman Engineering (320 Rt. 10 West, Randolph) was present, sworn under oath and accepted as an expert witness. Mr. Smith stated that lots 2, 8 and 11 were listed by Tax Assessor. A subdivision in the late 80’s divided the three lots into two lots that were recorded in Morris County Board of Records.

At the project inception, the initial consideration was to develop Lot 8 which would have required many variances including parking, retaining walls, lighting and all building setbacks. Combining of the lots was a better planning alternative by the proposed building addition. Mr. Smith provided an overview which included the following plans:

- Sheet 1 – Site Plan
- Sheet 2 - Existing Condition & Demolition Plan
- Sheet 3 – Drainage & Utility Plan
- Sheet 4 – Grading & Traffic Plan
- Sheet 5 – Landscape Plan
- Sheet 6 – Soil Erosion & Sediment Control Plan
- Sheet 7 – Lighting Plan
- Sheet 8, 9 & 10 – Details
The existing masonry garage will be demolished. Additional parking will be added to the northerly and easterly sides of the proposed building for circulation. Onsite sidewalks are also proposed. New storm drain and detention basins are proposed. Property accessed from Route 46. All driveways but one will be for two way traffic. In front of the building will have only one way traffic. Proposed landscaping to include the addition of twenty-one evergreens.

The applicant is looking for the township to vacate a 25’ portion of the 100’ Broad Street ROW that is adjacent to the property. Leaving 25’ on the applicant’s side of the center line and 50’ on the opposite side of the center line. An additional 10’ wide area would be used for 10 parallel parking spaces along Broad Street. Testifying that the Council would be agreeable, provided that the board looked favorably upon the application.

Mr. Smith added that the Council would also impose a time limitation that if the application was approved and remained unconstructed for a certain period of time, the vacation would revert back to the township. The Board Attorney clarified that the applicant would have to return to the council to obtain approval if the board should look favorably on the application. The applicant’s attorney confirmed clarification for the board, regarding a time element of approval as well for the development to take place.

An overview of the requested variances include:

- **D2 Use Variance for 10,231 sq. ft. expansion of an existing non-conforming retail use.**
- **D2 Use Variance for expansion of an existing .37 Floor Area Ratio (FAR) where .25 is required.** The FAR will not increase from the .37.
- **‘C’ Bulk Variance for 9’ x 18’ parking space size where 10’ x 20’ is required.** Reducing impervious coverage.
- **‘C’ Bulk Variance for parking space quantity.** Currently 41 parking spaces where 79 are required. Proposing 89 parking spaces where 123 spaces are required. The building is increasing by approximately 64% in area and the parking is increasing by 122% for the addition of the site.
- **‘C’ Bulk Variance for parking in the front yard.** Pre-existing 20.79’ non-conforming front yard setback where 24.83’ is required. Off 2’ but still setback further than the existing building.
- **‘C’ Bulk Variance for signage.** Current OB zone sign requirement of 8 sq. ft. maximum area. Proposed signage of business district zone signage requirement of maximum 10% of any wall.

John Ruschke, PE commented on the FAR of .37 including the ROW but would be decreased if excluding the ROW. Bill Denzler, PP commented that the basement should not be included in the calculations. Steven Smith responded that the FAR would actually be .34 and not .37 as previously stated. Additionally, Mr. Smith testified that the proposed 27.85’ building height does comply with building height requirements.

The engineering report dated May 31, 2012 and the planning report dated November 25, 2009 were referenced. Mr. Smith testified that the applicant would work with the engineer to satisfy the items referenced in the report. Traffic testimony will be provided by the applicant’s professional. The only remaining open items were landscaping (Item 5) and COAH (Item 6). The landscaping was added after the report was issued and the COAH is no longer an issue.

Chr. Rodimer opened to the public for questions.

Steve Weisburg (9 Fischer Trail) inquired about lighting. The applicant testified that the signs would be externally illuminated with goosenecks. Mr. Weisburg had no further questions.

Saba Husain, Esq. of Saba Law, LLC (Morris Plains) represented the property owner at 406 East Lane. Inquired about the level of noise, time of operations and a guard rail. Mr. Andrew Talbert testified to the hours of operation. Existing Kim Swim may be 9:30, possible lessons later but on the other side of the building. Typical retail hours proposed to be 9:30. Lights to go off except for required safety lighting. Ice cream store request for 10:00 and location would be on the other side of building. Steven Smith spoke to row of trees, testified that the noise levels would meet ordinance and would not exceed the noise levels of Route 46. It was determined that the resident at 406 East Lane was using the applicant’s property to make K-Turn’s for access to their driveway. Mr. Weiner asked Mr. Talbert if he was aware that the resident was encroaching on his property. Mr. Talbert was not aware, confirmed that the proposed would not change what the resident is currently doing and that they could continue to use it as they do now. The applicant stated that the proposed changes would not create run-off onto the neighbor’s property. Mr. Smith confirmed to Saba Husain, Esq. that there would be a staggered row of 6’ evergreen trees. There were no further questions.

Dolores Westling (5 Mendes Street) inquired about the chains across several driveways. Steve Smith advised that those driveways would be removed in the development of the plan. Trees will be added. Ms. Westling asked about the drainage system, future runoff as it relates to the impervious coverage created by the additional development and lighting on the back of the building. Ron Heymann, Esq. stated that they don’t anticipate any drainage issues but if there is
a problem and the applicant is the cause of it, the applicant will resolve it. John Ruschke, PE commented that the applicant has agreed to comply with the township’s ordinances on stormwater and groundwater recharge requirements. Applicant will be held to the township and NJDEP’s standards of meeting these water quantity and quality issues. Steve Smith responded to the lighting being shoebox fixtures and shielded. The board attorney added that the lighting will be subject to field inspection and that the resident can call if there is a problem.

Chr. Rodimer opened to other members of the public and seeing none, closed the public portion of the meeting.

John Ruschke, PE commented that if the applicant agrees to the conditions stated in the engineer’s letter there are no further concerns. The applicant’s attorney agreed. Bill Denzler, PP commented on the ice cream use and the requirement of returning to the board for restaurant use. Mr. Talber agreed there would be no ice cream. Ron Haymann, Esq. agreed that an ice cream tenant would require them to come back to the board. Bill Denzler, PP commented on onsite and offsite circulation. The response was deferred to their traffic expert. Bill Denzler inquired about the foot candles. Mr. Smith agreed to shields on the sides of the fixtures and that all others to be revised to comply. The township planner referenced the variance as it relates to the impact for the use based upon the rezoning in 2000 to an office zone. Steve Smith spoke to the fact that the use is already there. And since there is no new use, considered a pre-expansion of the use that has existed harmoniously on the site. Bill Denzler commented on the FAR and inquired if any consideration was given to the variances. Steve Smith responded to the maximum amount of property and the aspects used to derive the proposed. Bill Denzler spoke to the setback, the off-street parking, 123 required with 69 proposed, 34 spaces short. Steve Smith deferred to the traffic engineer. Bill Denzler inquired about signage commenting that it is typical retail consistent with what is in town and asked if any changes to the freestanding sign in front were proposed. Mr. Smith stated no but if changes were made it would use the existing configuration.

Chr. Rodimer opened to the board.

Mbr. Korn commented in the board’s purpose of reducing non-compliance and increasing compliance. Architect responded 16’6” from the new addition to the top of the parapet and at the westerly side it is 18’6” high. Chr. Rodimer commented to Mbr. Korn that the applicant was proposing to meet the height requirements and was not seeking a variance. Mbr. Korn referenced the distance from the parking lot to the residential property line stating it did not meet ordinance requirements. The Board Attorney stated that the ordinance cited relates to abutting a residential boundary line. The Township Planner stated that this was not a residential boundary line but that of the OB1 zone. Mbr. Korn read the ordinance in question. The applicant’s attorney stated that it was a residential use not a residential zone. Existing residences are permitted in the zone. Larry Weiner, Esq. stated that Mbr. Korn’s point was a good one but was not applicable. There was further discussion among the professionals and Mbr. Korn regarding the interpretation of the ordinance, the distinction, sensitivity to the resident and buffering.

Mbr. Korn inquired about the number of handicapped spaces and their proposed location. Bill Denzler, responded that it was the correct number but would recommend that the some spaces be located in front of the new uses due to the grading of the site. Steve Smith stated that the handicapped spaces could be moved but needed to be kept together. Otherwise, the overall number of parking spaces would be reduced. There was brief discussion regarding the handicapped spaces. Should the application be approved, the applicant agreed to work with the township planner on the final locations of the handicapped spaces.

Mbr. Korn inquired about the loading zone and dumpster areas. Mr. Smith stated multiple loading zones were not an option and that the trash area was sufficient. Mbr. Korn referenced the landscape plan and a section facing Broad Street that did not have plantings. Mr. Smith indicated that there was not room due to a retaining wall. The resident at Lot 4.1 or 4.2 is behind the retaining wall. Mbr. Korn commented that the applicant was in violation of a zoning ordinance. The professionals determined that it was a residence in the OB1 zone. Chr. Rodimer stated that there was no violation. Larry Weiner, Esq. inquired if there was anything that the applicant could do in this location. Mr. Smith stated that a 4’ high solid fence could be added if this was the board’s concern. Mbr. Korn was satisfied and the applicant agreed to the fence a condition of approval.

Mbr. Korn inquired if purchasing additional land was considered by the applicant. Ron Heymann, Esq. indicated that years ago the owner of Lot 9 was not interested in selling. Mbr. Korn asked if the applicant had evidence. For the record, Mr. Talber testified that this took place about four years ago. Mbr. Korn spoke about purchasing 40’ of Lot 4 to reduce the applicant’s FAR. Mr. Smith stated that this was not a consideration due to the slope of the property.

Mbr. Korn inquired about the Route 46 and Broad Street driveways and why the Broad Street driveway was being closed. Ron Heymann, Esq. responded that it was at the recommendation of the insurance company. Mbr. Korn questioned Mr. Heymann’s ability to testify. Larry Weiner stated that Mr. Talber could answer these questions. Mr. Talber stated that there were notes from tenants regarding safety concerns regarding through traffic from Route 46 to Broad Street. Stating that the driveway has been cut-off for about six months now. Mbr. Korn asked Mr.
Ruschke to comment. Chr. Rodimer and Mr. Ruschke commented that the traffic testimony has not yet been provided. Mbr. Korn stated it did not have to wait and asked for Mr. Ruschke’s opinion. Mr. Ruschke stated that it's not unconventional or uncommon on a commercial property but that it could be deferred to the fire marshall if a second driveway was desired. Mr. Denzler stated that we will hear more during the traffic testimony but one driveway is sufficient provided it works properly. Additionally, Mr. Denzler commented that additional traffic onto residential Broad Street would be problematic. Stating that a traffic expert will need to determine the appropriateness of the adjoining uses.

Mbr. Korn inquired about 8’ retaining walls and consistent signage. Mr. Smith stated that there are no 8’ retaining walls proposed. Mr. Smith stated that the elevations would be similar and the colors may be different but would be tied to the canopies. Bill Denzler commented that it will look okay if there is some type of unification. Mbr. Korn inquired about the freestanding sign. Bill Denzler stated that during the prior testimony the applicant would stay in the same footprint. Any changes in text would be reviewed to ensure it is acceptable.

Mbr. Korn referenced the number of parking spaces and possible ice cream use. Mr. Heymann and Mr. Smith indicated that due to Bill Denzler’s prior comments it was removed from the table. Mbr. Korn referenced higher parking requirements for some types of tenants such as fitness centers, etc. Mr. Smith stated that the applicant would stipulate straight retail use.

Mbr. Richter inquired about a square on the plan. Mr. Smith stated it was a paved parking lot that would be removed and replaced with grass. Mbr. Passucci referenced parking on the Broad Street side and inquired if it would include sidewalk. Mr. Smith stated it was only to be a gravel parking area. Due to the slope, there is room to do a sidewalk or a parking area but not both without retaining walls. There is a proposed steps and railing leading from the gravel parking area on Broad Street to the site. Mbr. Passucci referenced the FAR and potential of reducing six stores to five. Ron Heymann, Esq. stated that this will be addressed at the next meeting. Mbr. Passucci commented on the attractiveness of the building but not if it’s empty.

Mbr. Dolan stated that his concerns would be addressed by the professionals and construction department regarding soil and sediment control and run-off during and post construction. Mr. Smith referenced the soil erosion and sediment control plan. Bill Denzler, PP referenced that the township engineer will be involved and has escrow to ensure everybody is covered. Mbr. Dankos referenced a big concern regarding using the music store as a U-Turn and inquired about the traffic light. This will be addressed by the traffic expert. Mbr. Dankos commented on the plan being good and had no further questions or concerns at this time. Chr. Rodimer also like the plan and the area and stated his biggest concerns were traffic. Deferring his questions until after the traffic testimony.

The applicant was unable to make the June 20, 2012 meeting and did not wish to wait until the August 1, 2012 meeting. Chr. Rodimer announced that the application would be carried to July 18, 2012 without further notice.

Motion to Adjourn.

Denean Probasco, Board Secretary Date Approved: July 18, 2012